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CITY & COUNTY OF HONOLULU

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU
STATE OF HAWAII

In the Matter of Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

Application to Modify SUP No. 2008/SUP-2
(SP09-403) by Modifying Condition No. 1 of the
Planning Commission's Findings of Fact,
Conclusions of Law, and Decision and Order,
dated June 10, 2019, and (2) Condition No. 5 of
the LUC's Findings of Fact, Conclusions of Law,
and Decision and Order Approving with
Modifications the City and County of Honolulu's
Planning Commission's Recommendation to
Approve Special Use Permit, certified on
November 1, 2019

FILE NOS. 2008/SUP-2
2023/SUP-2

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU'S PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
DECISION AND ORDER; CERTIFICATE OF
SERVICE

**DEPARTMENT OF ENVIRONMENTAL SERVICES,
CITY AND COUNTY OF HONOLULU'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER**

COMES NOW Applicant DEPARTMENT OF ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU, by and through its attorneys, JEFFREY HU and KAMILLA C. K. CHAN, Deputies Corporation Counsel, and respectfully submits this Proposed Findings of Fact, Conclusions of Law, and Decision and Order, pursuant to the Rules of the Planning Commission, City and County of Honolulu Section 2-74.

DATED: Honolulu, Hawai'i, December 22, 2023.

DANA M.O. VIOLA
Corporation Counsel

By



JEFFREY HU

KAMILLA C. K. CHAN
Deputies Corporation Counsel

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FILE NOS. 2008/SUP-2
2023/SUP-2

[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION
AND ORDER

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION AND ORDER**

This matter before the Planning Commission, City and County of Honolulu (the "Planning Commission") arises from the Department of Environmental Services, City and County of Honolulu's ("Applicant" or "ENV") application to modify Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order dated June 10, 2019 ("Planning Commission's 2019 Decision and Order") and the State of Hawai'i, Land Use Commission's ("LUC") Order certified on November 1, 2019 for County Special Use Permit No. 2008/SUP-2 for the sole purpose of modifying the December 31, 2022 deadline to identify an alternative landfill site that may be used upon closure of the Waimānalo Gulch Sanitary Landfill ("WGSL" or the "landfill").

Based on the record in this matter, including the evidence adduced at the contested case hearing, the credibility of the witnesses testifying at the hearing, and the respective proposed findings of fact, conclusions of law, and decision and order submitted by the parties and their respective responses thereto, the Planning Commission hereby makes the following findings of fact, conclusions of law, and decision and order:

FINDINGS OF FACT

I. PROCEDURAL MATTERS

1. The WGSL is located at 92-460 Farrington Highway, Kapolei, O‘ahu. See Solid Waste Management Permit No. LF-0041-14 dated March 3, 2023, included in Exhibit “A6”.

2. On December 23, 2022, ENV filed an Application to Modify State Special Use Permit No. 2008/SUP-2 (SP09-403) ("Application"), with the City and County of Honolulu, Department of Planning and Permitting (“DPP”) pursuant to Sections 2-38 and 2-49 of the Rules of the Planning Commission ("RPC") and Section 15-15-96.1 of the LUC Rules. See Application. Special Use Permit ("SUP") No. 2008/SUP-2 (SP09-403) allows for the operation of a landfill on the property identified by Tax Map Key ("TMK") Nos. (1) 9-2-003: 072 and 073, in Waimānalo Gulch, Oahu, Hawaii. See LUC’s Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modifications the City and County of Honolulu Planning Commission’s Recommendation to Approve Special Use Permit certified on November 1, 2019 (“LUC’s 2019 Decision and Order”), included in the Application’s Exhibit “B”; Planning Division Master Application Form. The WGSL is also identified by TMK Nos. (1) 9-2-050:005 and 006. See Declaration of Roger Babcock, Jr. dated December 22, 2022 (“Dec. Babcock”) at ¶14.

3. ENV's Application seeks a two-year extension of the deadline in Condition No. 5 of SUP No. 2008/SUP-2 (SP09-403), which states as follows:

5. By no later than December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon closure of WGS�. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

See LUC's 2019 Decision and Order, included in the Application's Exhibit "B" at 104.

4. The LUC's 2019 Decision and Order's Condition No. 5 was adopted with modifications from Condition No. 1 of the Planning Commission's 2019 Decision and Order, which states as follows:

1. On December 31, 2022, the Applicant shall identify an alternative landfill site that may be used upon WGS� reaching its capacity at a future date. This identification shall have no impact on the closure date for the WGS� because the WGS� shall continue to operate until it reaches capacity. This identification does not require the alternative landfill to be operational on December 31, 2022 but is intended to require the Applicant to commit to the identification of an alternative landfill site that may replace WGS� when it reaches capacity at a future date. The identification of an alternative landfill site by December 31, 2022 is based on the evidence presented and that, as the Planning Commission discussed in 2017, a five year timeframe was sufficient time for the Applicant to identify an alternative landfill site before the WGS� nears capacity. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

See Planning Commission's 2019 Order, included in the Application's Exhibit "A", at 65.

5. The Planning Commission's public hearing to consider ENV's Application was scheduled for June 28, 2023. On May 29, 2023, a notice of the hearing of the matter was published in the Honolulu Star-Advertiser.

6. On May 25, 2023, DPP transmitted its report and recommendation for approval of the Application to the Planning Commission. See DPP Findings of Fact, Analysis, Conclusions of Law, and Decision and Recommendation dated May 25, 2023.

7. On June 8, 2023, Ko Olina Community Association ("KOCA") and Maile Shimabukuro (collectively, "Intervenor KOCA") filed their Objection to Notice of Hearing. On June 19, 2023, Applicant filed a Response to Intervenor KOCA's Objection to Notice of Hearing.

8. On June 9, 2023, Intervenor KOCA filed their (1) Motion to Recognize Them as Existing Parties or in the alternative (2) Petition to Intervene. On June 19, 2023, Applicant filed a Response to Intervenor KOCA's (1) Motion to Recognize Them as Existing Parties or in the alternative (2) Petition to Intervene.

9. On June 13, 2023, Schnitzer Steel Hawaii Corp. ("Intervenor Schnitzer") filed a Motion for Enlargement of Time and a Petition to Intervene. On June 19, 2023, Applicant filed its Response to Intervenor Schnitzer's Motion for Enlargement of Time and Petition to Intervene.

10. On June 27, 2023, the Planning Commission issued a Contested Case Hearing notice.

11. At the public hearing on June 28, 2023, at the Mission Memorial Auditorium, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii, the Planning Commission heard a presentation by Franz Kraitz, Community Planning Branch Chief of the Department of Planning and Permitting, and public testimony from Cynthia Rezentes and Intervenor Schnitzer's counsel Ian Sandison, Esq.

12. On July 3, 2023, the Planning Commission issued an Amended Notice of Contested Case Hearing.

13. On August 9, 2023, the hearing was continued at the Mission Memorial Auditorium, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The Planning Commission opened the hearing to public testifiers, but there were none. The Planning Commission heard and granted Intervenor KOCA's (1) Motion to Recognize Them as Existing Parties or in the alternative (2) Petition to Intervene and moved to confirm Intervenor KOCA's status as a party intervenor. Intervenor KOCA agreed to withdraw their Objection to Notice of Hearing, and the Planning Commission moved to accept the withdrawal. The Planning Commission heard and granted Intervenor Schnitzer's Petition to Intervene and confirmed Intervenor Schnitzer's status as a party intervenor. Schnitzer agreed to withdraw its Motion for Enlargement of Time, and the Planning Commission moved to accept the withdrawal. Thereafter, the Planning Commission closed the public hearing on the Application.

14. The Planning Commission began the contested case portion of the hearing and stated its position on the Application, setting forth the following parameters:

- a. The Planning Commission's June 10, 2019 Findings of Fact, Conclusion of Law, and Decision and Order is currently in effect and controlling at this time;
- b. The LUC's Findings of Fact, Conclusion of Law, and Decision and Order certified on November 1, 2019 is currently in effect and controlling at this time;
- c. That ENV's Application before the Planning Commission was filed on December 23, 2022 to modify (1) Condition No. 1 of the Planning Commission's 2019 Decision and Order and (2) Condition No. 5 of the LUC's 2019 Decision and Order. Specifically, ENV seeks to modify the conditions that set a December 31, 2022 deadline for ENV to identify an alternative landfill site, and ENV seeks a two-year extension of time to re-evaluate its options;

- d. That the scope of the contested case hearing in this matter will be narrowly construed to ENV's limited request to modify the deadline for ENV to identify an alternative landfill site; and
- e. All other orders and conditions in the Planning Commission and LUC's Orders pertaining to the SUP will remain in effect and untouched by the Planning Commission.

See Tr. 8/9/23, 16:25-17:24.

15. The Applicant, Intervenor Schnitzer, and Intervenor KOCA (the "Parties") presented their opening statements. See id. at 18:10-22:12, 22:16-24:14, 24:16-29:18. The Parties stipulated to entering all exhibits submitted to the Planning Commission as part of the record. See id. at 31:1-22. The Planning Commission moved to accept the Parties' exhibit lists and exhibits as part of the record. See id. at 32:6-16.

16. On October 3, 2023, the Parties entered into a Stipulation to Admit Intervenor Schnitzer's Additional Exhibits into Evidence.

17. On October 18, 2023, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Auditorium, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. The Planning Commission accepted the Stipulation to Admit Intervenor Schnitzer's Additional Exhibits into Evidence. See Tr. 10/18/23, 9:21-22. The Planning Commission reiterated that it will admit all submissions by all parties into the record, including the original Application from ENV, any recommendations or reports from DPP, and exhibits lists, as amended by the parties, submitted by ENV, Intervenor Schnitzer, and Intervenor KOCA. See id. at 9:23-10:3. The Applicant presented its first and only witness ENV Director Roger Babcock, Jr. ("Director Babcock"). See id. at 11:1. The Applicant offered no further witnesses and concluded its case-in-chief. See id. at 68:2. Intervenor Schnitzer presented its two

witnesses, Nicholas Garofolo and Scott Sloan, and concluded its case-in-chief. See id. at 68:21, 86:2, 98:6.

18. On November 1, 2023, the Planning Commission resumed the contested case hearing on the Application at the Mission Memorial Auditorium, Mission Memorial Building, 550 South King Street, Honolulu, Hawaii. See Tr. 11/1/23, 5:13-22. Intervenor KOCA began their case-in-chief and presented their two witnesses, Ken Williams and Dwight Miller. See Tr. 11/1/23, 8:13, 30:24. The Planning Commission accepted Mr. Miller as an expert in solid waste management including landfill siting and design. See Tr. 11/1/23, 32:12-16. Intervenor KOCA rested their case. See Tr. 11/1/23, 46:9-10.

EXHIBITS AND WITNESSES

19. The Parties stipulated to entering all of the Parties' exhibits into the record.

20. Applicant submitted Exhibits "A1" to "A18". Intervenor Schnitzer submitted Exhibits "S1" to "S19." Intervenor KOCA submitted Exhibits "K1" to "K475".

21. The Planning Commission received all of the Parties' exhibits into the record.

22. The Applicant called Director Roger Babcock, Jr. as its only witness.

23. Intervenor Schnitzer called Nicholas Garofolo and Scott Sloan as its witnesses.

24. Intervenor KOCA called Ken Williams and Dwight Miller as their witnesses.

Intervenor KOCA moved to qualify Dwight Miller as an expert witness.

II. PROPOSAL FOR MODIFICATION OF SPECIAL USE PERMIT

A. A TWO-YEAR EXTENSION FOR LANDFILL SITING IS NECESSARY

25. Condition No. 1 of the Planning Commission's 2019 Decision and Order requires the Applicant, on December 31, 2022, "to identify an alternative landfill site that may be used

upon WGS� reaching its capacity at a future date.” See Planning Commission’s 2019 Decision and Order at 65. “The identification of an alternative landfill site by December 31, 2022 is based on the evidence presented and that, as the Planning Commission discussed in 2017, a five year timeframe was sufficient time for the Applicant to identify an alternative landfill site before the WGS� nears capacity.” Id.

26. Condition No. 5 of the LUC’s 2019 Decision and Order requires the Applicant, by no later than December 31, 2022, to “identify an alternative landfill site that may be used upon closure of the WGS�.” See LUC’s 2019 Decision and Order at 104.

27. A modification of SUP No. 2008/SUP-2 (SP09-403) is being sought for a two-year extension of time, from December 31, 2022 to December 31, 2024, to allow Applicant additional time to find and identify a new landfill site.

1. Act 73 (2020) Further Limited Potential Landfill Sites

28. Prior to the enactment of Act 73 (Session Laws of Hawai‘i 2020) (“Act 73”), existing regulations limited and/or restricted new landfills near airport runways, in floodplains, in wetlands, within two hundred feet of a fault, in seismic impact zones, in unstable areas, and in possible tsunami inundation areas. See HAR § 11-58.1-13; Exhibit “A18” (map showing landfill restrictions); Tr. 10/18/23, 29:6-17.

29. In September 2020, Governor David Y. Ige approved Act 73, which further restricted landfill siting by amending State law to (1) prohibit “waste or disposal facilities,” which includes landfills, in conservation districts, and (2) prohibit the construction of waste or disposal facilities within one-half mile from residential, school, or hospital property lines. See HRS § 183C-4(b); HRS § 342H-52(b); see also Tr. 10/18/23, 14:11-15.

30. Act 73 and its new restrictions came into effect after the Planning Commission and the LUC issued their respective 2019 Decisions and Orders that imposed the December 31, 2022 landfill identification deadline.

31. Director Babock testified that the new restrictions imposed by Act 73 prohibited Applicant from siting a landfill in a significant portion of the island of O‘ahu. See Tr. 10/18/23, 26:18-27:4, 28:1-28:10, Exhibit “A15” (map showing Act 73 restrictions).

32. Act 73 eliminated from consideration the previously proposed landfill sites outside of the No Pass Zone. See Dec. Babcock at ¶17; Tr. 10/18/23, 14:11-22.

33. In 2021, Mayor Rick Blangiardi appointed a new Landfill Advisory Committee (“LAC”) to assist with the evaluation and scoring of the six sites identified as the WGSLS’s potential replacement landfill sites. See Tr. 10/18/23, 14:23-15:4, 29:18-30:8. The LAC held eight public meetings between October 2021 and June 2022, during which it helped develop processes and criteria to evaluate and score the six Act 73 compliant landfill sites under consideration by the City and County of Honolulu (the “City”). See Tr. 10/18/23, 14:23-15:4, 29:25-30:12.

2. Red Hill Fuel Leak

34. In November 2021, several thousand gallons of jet fuel were released inside the U.S. Navy’s Red Hill Bulk Fuel Storage Facility, which impacted the island’s drinking water supply and led to heightened awareness among the LAC members, the public, and the Board of Water Supply (the “BWS”). See, e.g., <https://health.hawaii.gov/about/red-hill-water-information/>, referenced in the Application’s footnote 2; see also Tr. 10/18/23, 14:23-15:8, 37:23-38:6. The Red Hill fuel leak has been described as “a humanitarian and environmental disaster”. See BWS’ letter dated November 16, 2022 at 3, included in the Application’s Exhibit

“C”. New information about Red Hill is periodically updated by the State of Hawai‘i, Department of Health. See <https://health.hawaii.gov/about/red-hill-water-information/>.

3. The LAC Recommended None of the Potential Sites Due to Proximity to Board of Water Supply’s No Pass Zone

35. During the LAC’s fourth meeting held on December 14, 2021, representatives of the BWS, including its Manager and Chief Engineer Ernest Y.W. Lau, P.E. (“Manager Lau”), presented the BWS’ perspective and concerns about siting a new landfill above the groundwater aquifer. See Meeting Minutes for LAC Meeting #4, included in the Application’s Exhibit “E”; Tr. 10/18/23, 65:10-17. The BWS highlighted the dangers of landfill leachate leaking into the aquifer, and presented literature from the Environmental Protection Agency that indicated that all landfills eventually leak. See Meeting Minutes for LAC Meeting #4; Tr. 10/18/23. 15:9-16. At the same meeting, the Department of Environmental Services’ consultant presented information relating to groundwater protection measures for municipal solid waste (“MSW”) landfills. See Meeting Minutes for LAC Meeting #4; Tr. 10/18/23, 21:18-66:6.

36. The LAC scored the six sites and approved a motion to recommend that none of the proposed sites is acceptable because of each site’s location in the “No Pass Zone.” See Tr. 10/18/23, 15:15-21.

37. According to the BWS, “[t]he No Pass Zone was derived from the review of geologic maps and borings that define the areas of thick caprock around O‘ahu. Areas that are below (or makai) the No Pass Zone are primarily located on thick caprock. ... Areas that are above the No Pass Zone, have no caprock and are located directly above the groundwater that is used for drinking water.” See BWS’ letter dated November 16, 2022 at 2.

38. The LAC issued a report with the same recommendation that none of the proposed sites be selected as the next landfill site. See LAC's Final Report dated June 2022, included in the Application's Exhibit "D"; Tr. 10/18/23, 32:13-33:7. The LAC also recommended to amend Act 73, look at federal sites, and look at siting through initiation of eminent domain process. See LAC's Final Report dated June 2022; Tr. 10/18/23, 32:18-34:2.

4. **The BWS Officially Disapproved of the Six Potential Landfill Sites**

39. On October 24, 2022, the Applicant, along with Mayor Blangiardi and other members of his administration, briefed the BWS Board about the landfill selection status, the urgency of the City's need to identify an alternative landfill site by December 31, 2022, and the LAC's reservations relating to the six proposed sites because they are located in the BWS No Pass Zone. See Exhibit "A13" (ENV's Seventh Semi-Annual Report) at 7; Tr. 10/18/23, 35:17-36:3.

40. On November 3, 2022, the Applicant sent a follow-up letter to Manager Lau to formally ask for BWS' official position on the six potential landfill sites the LAC evaluated. Specifically, the Applicant asked if the Mayor were to select any of the six ranked sites on the LAC's list, "what would be the BWS' official response or position?" See ENV's letter to the BWS dated November 3, 2022, included in the Application's Exhibit "F".

41. On November 16, 2022, the BWS responded to Applicant with its official position:

For the reasons set forth below, the BWS does not approve any of the six proposed landfill sites that are located above (or mauka) the No Pass Zone and over O'ahu's drinking water aquifer system.

All six of the proposed landfill sites are located above the BWS' No Pass Zone, and all six of the proposed landfill sites are located over Oahu's hydrogeologically-connected drinking water aquifer system. Never has the importance of this groundwater aquifer been more apparent, and never has our responsibility to protect it been more paramount. As you know, the people of Oahu are still coping with what the Hawaii Department of Health aptly described as "a humanitarian and environmental disaster" caused by fuel releases from the U.S. Navy's Red Hill Bulk Fuel Storage Facility that resulted in the contamination of Oahu's drinking water supply and the pollution of this island's irreplaceable sole-source groundwater aquifer. This unfortunate environmental catastrophe is a stark reminder that we all need to be proactive in protecting all of our precious drinking water resources from underground sources of contamination. Oahu's aquifer cannot be replaced.

BWS' letter to ENV dated November 16, 2022 (footnote omitted), included in the Application's Exhibit "C".

42. Due to the new legal restrictions imposed by Act 73 and the BWS' disapproval to the siting of any of the six proposed landfill sites because all sites are located in the BWS' "No Pass Zone", the Applicant is left with no viable new landfill sites, other than perhaps federal lands. See Dec. Babcock at ¶41; Tr. 10/18/23, 35:2-16.

43. It is necessary to grant two additional years for Applicant to locate and identify a new landfill site. See Tr. 10/18/23, 38:20-39:2.

44. Intervenor KOCA does not oppose ENV's request for an extension. Tr. 8/9/23, 26:25-27:4; Tr. 11/1/23, 27:17-28:4.

45. Intervenor Schnitzer supports ENV's request for a two-year extension. Tr. 8/9/23, 22:16-18.

B. CONTINUED WASTE DIVERSION

46. Consistent with the requirements of the current SUP No. 2008/SUP-2 (SP09-403), Applicant has continued its efforts to use alternative technologies to provide a comprehensive waste stream management program. See Dec. Babcock at ¶19. Over the years, Applicant has been able to divert more and more waste from the WGS� to H-POWER. See Dec. Babcock at ¶19.

47. In Calendar Year 2010, approximately 1,214,904 tons of waste was generated on O‘ahu. Of that amount, the Landfill received 163,736 tons of MSW and 179,946 tons of ash and residue from H-POWER (for a combined total of 343,682 tons). See Planning Commission’s 2019 Decision and Order, at pages 50-51, ¶ 226, included in Exhibit “A” of the Application; see also Dec. Babcock at ¶20. According to Applicant’s data, the landfill diversion rate for 2010 was 71.7%. See Dec. Babcock at ¶20.

48. In Calendar Year 2020, approximately 1,210,281 tons of waste was generated on O‘ahu. Of that amount, the WGS� received 56,114 tons of MSW and 182,112 tons of ash and residue from H-POWER (for a combined total of 238,226 tons). See Application’s Exhibit “G” (chart showing data for 2017 to 2021); see also Dec. Babcock at ¶21. According to Applicant’s data, the landfill diversion rate for 2020 was 82.2%. See Dec. Babcock at ¶21.

49. In Calendar Year 2021, approximately 1,215,467 tons of waste was generated on O‘ahu. Of that amount, the WGS� received 106,723 tons of MSW and 157,531 tons of ash and residue from H-POWER (for a combined total of 264,254 tons). See Application’s Exhibit “G”; see also Dec. Babcock at ¶22. According to Applicant’s data, the landfill diversion rate for 2021 was 80.0%. See Dec. Babcock at ¶22.

50. Based upon data collected (prior to Applicant’s filing of its Application), Applicant projected that for Calendar Year 2022, the WGS� would receive approximately

70,000 tons of waste and 160,000 tons of ash and residue from H-POWER (for a combined estimated total of 230,000 tons). See Dec. Babcock at ¶23. Based upon Applicant's estimates, the MSW landfill diversion rate for 2022 was projected to be approximately 83%. See Dec. Babcock at ¶23.

51. In 2012, H-POWER's capacity increased to 900,000 tons per year because of the addition of a third boiler. See Dec. Babcock at ¶25. The third boiler is a mass burn unit, which can process waste streams that previously required landfilling, including sewage sludge, bulky waste, and treated medical waste (except medical sharps). See Dec. Babcock at ¶25.

52. In total, H-POWER's original refuse derived fuel boilers and mass burn unit processes waste to reduce its volume by 90 percent, and as of 2021, approximately 750,000 tons per year of MSW and sludge are diverted from the WGSL. See Dec. Babcock at ¶26.

53. Improvements at the H-POWER facility have resulted in an increased amount of metal recovered for recycling. See Dec. Babcock at ¶27. Currently, H-POWER recovers about 25,000 tons of metal annually for recycling. See Dec. Babcock at ¶27.

54. "Process residue" is composed of fine materials in the waste stream such as glass, sand and dirt that are separated using trommel screens and removed during pre-combustion waste processing. See Dec. Babcock at ¶28.

55. In July 2021, H-POWER began combusting its process residue on a trial basis. See Dec. Babcock at ¶29. This change has reduced the amount of process residue being disposed at the landfill from about 4,000 tons per month to zero (i.e., 48,000 tons per year). See Dec. Babcock at ¶29.

56. Applicant is also pursuing ash recycling to further decrease waste that must be landfilled. See Dec. Babcock at ¶30. The ash recycling project, once permitted and built, has the

potential to divert at least 60% of the H-POWER ash that is currently landfilled at the WGSL. See Dec. Babcock at ¶30.

57. Applicant has continued its effort to significantly reduce solid waste disposal at the WGSL by expanding H-POWER and the waste to materials recycling programs, and developing alternative disposal options for materials presently being landfilled. See Dec. Babcock at ¶33. Collectively, these actions have and will continue to divert significant amounts of waste from the WGSL. See Dec. Babcock at ¶33. However, despite new technological solutions that Applicant continues to consider, Applicant cannot completely eliminate the need for a landfill at this time. See Dec. Babcock at ¶33.

58. Assuming current fill rates, WGSL is expected to reach full capacity in 2036. See Tr. 10/18/23, 23:10-17.

C. PURPOSE AND NEED FOR A LANDFILL

59. WGSL is the only permitted public MSW facility on the island of Oahu. See Dec. Babcock at ¶15. It is the only landfill option for disposal of MSW for the general public and the only permitted repository for the ash produced by H-POWER. See Tr. 10/18/23, 18:2-20; Dec. Babcock at ¶15. A landfill to dispose of MSW is required because there will always be material that cannot be combusted, recycled, reused or shipped. See Dec. Babcock at ¶34. A landfill also is essential because H-POWER cannot operate without the landfill as a backup disposal option. See Dec. Babcock at ¶35. Specifically, H-POWER's Solid Waste Management Permit issued by the State of Hawai'i, Department of Health, provides in relevant part:

Section C. MSW Storage and Processing

20. In the event that the facility is unable to combust RDF/MSW or process MSW for more than 72 hours, the permittees shall cease from accepting any more MSW at the affected area until the equipment is back in operation. **During such times, waste shall be diverted to permitted storage and disposal facilities or to operational areas of the facility.** All other permit conditions, including capacity limits, shall be maintained.

Section E. Management and Testing of Pre-Combustion Residue

27. **The residue shall be transported to a permitted landfill for disposal.**

Section F. Management and Testing of Post-Combustion Ash

32. **The ash shall be transported to a permitted ash monofill for disposal.**

See Solid Waste Management Permit No. IN-0049-11, included in Exhibit “H” of the Application (bold added).

60. A landfill is also critical to the public health during natural disasters such as tsunamis or hurricanes and during times of emergency to control the rapid and massive accumulation of waste. See Dec. Babcock at ¶37; Tr. 10/18/23, 24:9-17.

61. When the PVT landfill stopped accepting asbestos containing material (“ACM”) on or about January 1, 2021, the City’s landfill took on this waste stream to provide an on-island disposal option. See Dec. Babcock at ¶38. It has been reported that the PVT landfill will reach capacity in seven years, after which all of PVT’s waste must go to the only remaining disposal site, the WGS. See Dec. Babcock at ¶38.

62. Therefore, a landfill is and will be necessary for proper solid waste management, the lack of which would potentially create serious health and safety issues for the residents of O‘ahu. See Dec. Babcock at ¶40; Tr. 10/18/23, 23:18-22. A landfill is a critical component of the City’s overall Integrated Solid Waste Management Plan, which looks at all of the factors that make up solid waste management, including reuse and recycling, the H-POWER facility, and landfilling for material that cannot be recycled or burned for energy. See Dec. Babcock at ¶40.

PROPOSED FINDINGS OF FACT OR CONDITIONS

Any proposed findings of fact or conditions submitted by the Applicant or Intervenors that are not expressly ruled upon by the Planning Commission by adoption herein, or rejected by clearly contrary findings of fact, are hereby denied and rejected.

LABELING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

To the extent that any of the foregoing Findings of Fact are more properly deemed to be Conclusions of Law, they are incorporated herein as Conclusions of Law. Should any of the following Conclusions of Law be more properly deemed Findings of Fact, they are incorporated herein as Findings of Fact.

CONCLUSIONS OF LAW

The Planning Commission hereby concludes as follows:

1. The Planning Commission has jurisdiction to hold public hearings and make recommendations on all proposals to adopt or amend the general plan, development plans and zoning ordinances, and to approve special use permits for unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified in accordance with the RPC. Section 6-1506(b), Revised Charter of the City and County of Honolulu 1973 (2017 Edition); HRS Section 205-6(a).

2. HRS Section 91-10(5) provides that:

[T]he party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.

The Applicant has the burden of proof to show by a preponderance of the evidence that the Application meets the provisions of Section 2-45 of the RPC.

3. In the Application, the Applicant sought a modification of a single condition of the SUP No. 2008/SUP-2 (SP09-403), specifically the deadline to identify a new landfill site.

4. Chapter 2, Subchapter 4 of the RPC, sets forth the rules applicable to State SUPs. Section 2-45 of the RPC provides as follows:

Test to be applied. Certain 'unusual and reasonable' uses within agricultural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an 'unusual and reasonable' use:

(a) Such use shall not be contrary to the objectives sought to be accomplished by the state land use law and regulations.

(b) That the desired use would not adversely affect the surrounding property.

(c) Such use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection.

(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

(e) That the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

Based on the findings set forth above, the Planning Commission concludes that ENV's Application for a modification of the deadline to identify a new landfill site is not contrary to the objectives sought to be accomplished by the state land use law and regulations; (b) would not adversely affect surrounding property as long as operated in accordance with governmental approvals and requirements, and mitigation measures are implemented in accordance with the

Applicant's representations as documented in the 2008 FEIS; (c) would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, or police and fire protection; (d) the same unusual conditions, trends and needs that existed at the time the original SUP was granted continue to exist; and (e) the land on which the WGSL is located continues to be unsuited for agricultural purposes.

5. The Planning Commission concludes that the Applicant has met its burden of proof with respect to the provisions set forth in Section 2-45 of the RPC.

DECISION AND ORDER

Pursuant to the foregoing Findings of Fact and Conclusions of Law, it is the decision and order of the Planning Commission to APPROVE Applicant's Application to Modify SUP No. 2008/SUP-2 (SP09-403), by modifying (1) Condition No. 1 of the Planning Commission's 2019 Decision and Order and (2) Condition No. 5 of the LUC's 2019 Decision and Order, as follows:

1. Condition No. 1 of the Planning Commission's 2019 Decision and Order shall be amended to the following:

On December 31, 2024, the Applicant shall identify an alternative landfill site that may be used upon WGSL reaching its capacity at a future date. This identification shall have no impact on the closure date for the WGSL because the WGSL shall continue to operate until it reaches capacity. This identification does not require the alternative landfill to be operational on December 31, 2024 but is intended to require the Applicant to commit to the identification of an alternative landfill site that may replace WGSL when it reaches capacity at a future date. Upon identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

2. Condition No. 5 of the LUC's 2019 Decision and Order shall be amended to the following:

By no later than December 31, 2024, the Applicant shall identify an alternative landfill site that may be used upon closure of WGSL. Upon

identification of the alternative landfill site, the Applicant shall provide written notice to the Planning Commission and the LUC.

The Planning Commission further orders that the following condition be added:

3. The Applicant shall provide quarterly in-person reports to the Planning Commission regarding the status of the efforts to identify a new landfill site on O'ahu.

All remaining conditions of SUP No. 2008/SUP-2 (SP09-403) shall remain in full force and effect.

The foregoing Findings of Fact, Conclusions of Law, and additional conditions shall supersede any inconsistent finding, conclusion, or condition in the Planning Commission and LUC's 2019 Decisions and Orders and shall otherwise supplement any and all existing findings, conclusions and conditions in said Decisions and Orders.

The effective date is the date of this Decision and Order below.

Dated at Honolulu, Hawai'i, _____.

PLANNING COMMISSION

CITY AND COUNTY OF HONOLULU

By _____
PANE MEATOGA III, Chair

By _____
RYAN KAMO, Vice Chair

By _____
HILARIE ALOMAR, Member

By _____
KEN HAYASHIDA, Member

By _____
JOY KIMURA, Member

By _____
NATHANIEL KINNEY, Member

By _____
KAI NANI KRAUT, Member

By _____
MELISSA MAY, Member

By _____
9th member - Vacant

BEFORE THE PLANNING COMMISSION
OF THE CITY AND COUNTY OF HONOLULU

STATE OF HAWAII

In the Matter of Application of

DEPARTMENT OF ENVIRONMENTAL
SERVICES, CITY AND COUNTY OF
HONOLULU

Application to Modify SUP No. 2008/SUP-2
(SP09-403) by Modifying Condition No. 1 of the
Planning Commission's Findings of Fact,
Conclusions of Law, and Decision and Order,
dated June 10, 2019, and (2) Condition No. 5 of
the LUC's Findings of Fact, Conclusions of Law,
and Decision and Order Approving with
Modifications the City and County of Honolulu's
Planning Commission's Recommendation to
Approve Special Use Permit, certified on
November 1, 2019

FILE NOS. 2008/SUP-2
2023/SUP-2

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A COPY OF THE **DEPARTMENT OF
ENVIRONMENTAL SERVICES, CITY AND COUNTY OF HONOLULU'S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER** was

duly served by hand-delivery to the following on the date below, addressed as follows:

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DATED: Honolulu, Hawai'i, December 22, 2023.

DANA M.O. VIOLA
Corporation Counsel

By  _____
JEFFREY HU
KAMILLA C. K. CHAN
Deputies Corporation Counsel

22-00494/1407838